

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DANIEL GARNICA-MELGOZA,

Plaintiff,

v.

ADAM FORTNEY, *et al.*,

Defendants.

CASE NO. **2:22-cv-00392-BHS-**

**JRC**

ORDER DENYING MOTION TO  
APPOINT COUNSEL

Plaintiff brought this action under 42 U.S.C. § 1983. Dkt. 5. Before the Court is plaintiff's motion to appoint counsel. Dkt. 6. As discussed below, the Court denies this motion without prejudice.

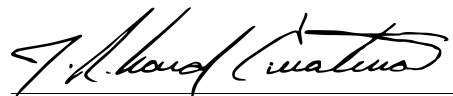
Although indigent defendants in criminal cases are entitled to appointed counsel, there is no constitutional right to appointed counsel in a § 1983 civil action. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981); *see United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995) ("Appointment of counsel under this section is discretionary, not mandatory." (citations omitted)). However, in "exceptional circumstances," a district court may

1 appoint counsel for an indigent civil litigant pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28  
 2 U.S.C. § 1915(d)). *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*  
 3 *grounds*, 154 F.3d 952 (9th Cir. 1998) (en banc). To decide whether exceptional circumstances  
 4 exist, the Court must evaluate both “the likelihood of success on the merits [and] the ability of  
 5 the [plaintiff] to articulate his claims *pro se* in light of the complexity of the legal issues  
 6 involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (second alteration added)  
 7 (citation omitted). “Neither of these factors is dispositive and both must be viewed together  
 8 before reaching a decision on request of counsel under section 1915(d).” *Id.*

9 Here, plaintiff contends that the Court should appoint counsel because another prisoner  
 10 helped him draft his complaint and that prisoner is “going home soon.” *See* Dkt. 6. at 5.  
 11 Likewise, the prisoner who allegedly helped plaintiff draft his complaint states that plaintiff  
 12 cannot represent himself *pro se* and needs an interpreter. *See id.* at 6. However, plaintiff filed a  
 13 letter with his complaint in which he coherently discusses events related to his complaint. *Id.* at  
 14 4–5. Furthermore, at this stage, the issues in this case do not appear to be complex. Additionally,  
 15 as plaintiff acknowledges, he has yet to show a likelihood of success on the merits. *See id.* at 5.  
 16 Therefore, at this time, plaintiff has not shown exceptional circumstances warranting the  
 17 appointment of counsel.

18 Accordingly, the Court **denies without prejudice** the motion to appoint counsel (Dkt. 6).  
 19 So, plaintiff may renew this request if, in the future, he faces “exceptional circumstances” that  
 20 warrant the appointment of counsel. The Clerk is directed to **send** plaintiff a copy of this order.

21 Dated this 1st day of April, 2022.

22 

23 J. Richard Creatura  
 24 Chief United States Magistrate Judge